

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

MATCH GROUP, INC., a corporation,

Defendant.

Case No. 3:19-cv-02281-K

JOINT REPORT

The Court having ordered that the parties submit a joint report “as to their opinions on alternative dispute resolution,” (Doc. 72), Plaintiff Federal Trade Commission and Defendant Match Group, Inc. respectfully submit this joint report.

I. THE PARTIES’ POSITIONS

A. The FTC’s Position

The FTC remains open to settlement discussions and would be willing to participate in mediation. The FTC respectfully requests that any mediation be before the Magistrate in this matter. The FTC is willing to participate in mediation either before or after the Court rules upon Match’s Motion to Dismiss. (Doc. 20.)

While Plaintiff’s counsel cannot commit to settlement terms before a Commission vote, counsel would communicate with agency leadership in preparation for any mediation and would be prepared to discuss what terms the Commission likely would accept to resolve the matter. If a proposed settlement is reached with Defendant, Plaintiff’s counsel would then seek Commission approval.

B. Match's Position

Match filed what is now a fully briefed Motion to Dismiss this case which is pending before this Court (Dkt. No. 20). The import of the Supreme Court's decision in *AMG* is that the FTC cannot obtain monetary relief in this matter under FTCA Section 13b (as Match has argued), even if the FTC were to prevail on any of its FTCA claims, as the FTC has acknowledged in Dkt. No. 62. Furthermore, years ago, Match completely ceased the conduct at issue under the FTCA, which, also precludes injunctive relief as a matter of law under *FTC v. Shire ViroPharma, Inc.*, 917 F.3d 147 (3d Cir. 2019), and its progeny. Finally, for the reasons fully set forth in Match's Motion to Dismiss, the FTC's claim under ROSCA (that Match's online cancellation mechanism was not "simple") fails as matter of law.

Despite all this, the FTC and Match have engaged in periodic confidential settlement communications, including recently, in this matter. While Match is prepared and willing to engage in further ADR procedures, including formal mediation either before a Magistrate Judge or a private mediator selected by the parties, because the FTC and Match fundamentally disagree about whether either monetary or injunctive relief could ever be obtained as a matter of law, Match does not expect ADR to produce a settlement at this juncture and, therefore, respectfully asks that this Court decide its pending Rule 12 Motion to Dismiss prior to any further mandatory settlement proceedings.

Dated: July 15, 2021

Respectfully submitted,

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